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19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA

21 NETFLIX, INC., a Delaware corporation,

22 Plaintiff,

23 vs.

24 BLOCKBUSTER INC., a Delaware
 corporation, DOES 1-50,

25 Defendants.

26
 27 AND RELATED COUNTER ACTION.

CASE NO. C 06 2361 WHA (JCS)

Judge William H. Alsup

**JOINT CLAIM
 CONSTRUCTION AND
 PREHEARING STATEMENT**

Hearing Date: Jan. 31, 2007

Time: 1:30 P.M.

Courtroom: 9, 19th Floor

Judge: William H. Alsup

Complaint Filed: Apr. 4, 2006

Plaintiff and Counterdefendant, Netflix, Inc., and Defendant and Counterclaimant, Blockbuster Inc., submit this Joint Claim Construction and Prehearing Statement under Patent Local Rule 4-3.

I AGREED CLAIM TERMS

To date, the parties have not succeeded in agreeing on the construction of any claim terms, phrases, or clauses (collectively, “claim terms”) of the patents-in-suit.

II CLAIM TERMS TO BE CONSTRUED¹

1. “item/movie rental queue” (selected by both parties)
2. “ordered list” (selected by both parties)
3. “based upon the order of the list” (selected by both parties)
4. “electronically updating” (selected by both parties)
5. “computer-implemented method/steps” (selected by both parties)
6. “based on/in the desired order” (selected by Blockbuster)²
7. “periodic fee” (selected by Netflix)
8. “item/movie/game selection criteria” (selected by Blockbuster)

III PROPOSED CONSTRUCTIONS

The claim terms to be addressed at the Claim Construction Hearing are as follows:

A. “item/movie rental queue”

1. Netflix’s Proposed Construction:

Sequence of items/movies used by a rental provider to determine which items/movies to deliver

¹ The order in which claim terms are listed below is for convenience only and does not suggest their relative importance.

² Blockbuster believes it is appropriate to construe this claim language as a single term. Netflix objects to Blockbuster’s attempt to offer the distinct claim terms “based on the desired order” and “in the desired order” as a single term. Netflix offers proposed constructions here reserving and without waiving any rights, and will explain its position more fully in its claim-construction briefs.

2. Blockbuster's Proposed Construction:

Two or more items/movies for future rental or possible future rental, or the names or other representations of two or more such items/movies.

Thus:

"item rental queue": Two or more things of any kind for future rental or possible future rental, or the names or other representations of any two or more such things.

"movie rental queue": Two or more movies for future rental or possible future rental, or the names or other representations of any two or more such movies. For purposes of this definition, "movies" means anything consisting in whole or in part of moving pictures – for example, and without limitation, any motion pictures, television series, documentaries, cartoons, music videos, video recordings of concert performances, instructional programs, or educational programs.

B. "ordered list"

1. Blockbuster's Proposed Construction:

Names or other representations of two or more items, arranged so that one or more of the items is before or after one or more other items.

2. Netflix's Proposed Construction:

List specifying the customer's desired rental order

C. "based upon the order of the list"

1. Netflix's Proposed Construction:

So as to provide the next-available movie(s) in the order specified by the list

2. Blockbuster's Proposed Construction:

In the same sequence as that of the "ordered list" referred to earlier in the claim.

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D. “electronically updating”

1. Blockbuster’s Proposed Construction:

Changing information (including making corrections), using, in whole or in part, any electronic device. For purposes of this definition, an “electronic” device is any device that uses a flow of electrons in a vacuum, in gaseous media, or in a semiconductor.

2. Netflix’s Proposed Construction:

The provider’s computer(s) changing

E. “computer-implemented method/steps”

1. Netflix’s Proposed Construction:

’381: Method using provider computer(s) to facilitate each step;

’450: Use of provider computer(s) to facilitate each step

2. Blockbuster’s Proposed Construction:

A method/steps accomplished using, in whole or in part, a programmable device that can store, retrieve, and process information.

Thus:

“computer-implemented method”: A process or procedure accomplished using, in whole or in part, a programmable device that can store, retrieve, and process information.

“computer-implemented steps”: Actions, proceedings, or measures accomplished using, in whole or in part, a programmable device that can store, retrieve, and process information.

F. “based on/in the desired order”

1. Blockbuster’s Proposed Construction:

In the same sequence in which any person wants the items to be provided.

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2. Netflix's Proposed Construction:³

"based on the desired order": so as to provide the next-available movie(s) in the rental sequence specified by the customer

"in the desired order": in the rental sequence specified by the customer

G. "periodic fee"

1. Netflix's Proposed Construction:

Fee to be paid per subscription period for the right to rent

2. Blockbuster's Proposed Construction:

An amount incurred, paid or charged at regular intervals for a service – for example, and without limitation, an hourly, daily, monthly, or annual fee.

H. "item/movie/game selection criteria"

1. Blockbuster's Proposed Construction:

Any information used to choose a thing (or "item"), regardless of what person or device makes the choice.

2. Netflix's Proposed Construction:

Characteristic(s) and/or order of items/movies/games desired by the customer

IV SUPPORT FOR PROPOSED CONSTRUCTIONS

A. "item/movie rental queue"

1. Netflix's Support:

a. Specification:

- (1) '381: abstract, figures, claims, 1:23-:55, 2:42-:48, 3:20-:35, 6:40-:43, 6:66-7:37, 8:30-:46, 9:55-:57, 9:66-10:2, 12:18-:64

³Netflix objects to Blockbuster's attempt to offer the distinct claim terms "based on the desired order" and "in the desired order" as a single term. Netflix offers proposed constructions here reserving and without waiving any rights, and will explain its position more fully in its claim-construction briefs.

(2) '450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the '381-patent entries for this term

b. Dictionaries:

- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of "item," "movie," "rental," and "queue")
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of "item," "movie," "rental," and "queue")
- (3) The excerpts from *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of "item," "movie," "rental," and "queue")
- (4) The excerpts from *Webster's Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of "item," "movie," "rental," and "queue")
- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of "item," "movie," "rental," and "queue")
- (6) Any dictionary definitions offered by Blockbuster

c. Other:

The claims, prosecution histories, and cited references for the '450 and '381 Patents.

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2. Blockbuster's Support:

a. Specification:

- (1) '450 Patent Col. 4, Lines 56-64; '381 Patent, Col. 3, Lines 24-32.
- (2) '450 Patent Col. 4, Lines 54-67; '381 Patent, Col. 3, Lines 22-35.
- (3) '450 Patent, Col. 8, Lines 43-65; '381 Patent, Col. 7, Lines 10-32.
- (4) '450 Patent, Col. 9, Line 64 to Col. 10, Line 14; '381 Patent, Col. 8, Lines 30-46.

b. Dictionaries:

- (1) The excerpts from *Oxford English Dictionary* (hereafter, *OED*) attached as Exhibit A (including definitions of "item," "queue," "rent," "rental" and terms including "rental")
- (2) The excerpts from *The New Lexicon Webster's Dictionary of the English Language* (1988 Edition) (hereafter, *New Lexicon Webster's*) attached as Exhibit B (including definitions of "item," "movie," "queue," "rent," "rental," and terms including "rental")
- (3) The excerpts from *Merriam-Webster's Collegiate Dictionary* (Eleventh Edition) (hereafter, *Webster's Collegiate*) attached as Exhibit C (including definitions of "item," "movie," "queue," "rent," "rental," and terms including "rental," "select" and "selection")
- (4) The excerpts from Rudolf F. Graf, *Modern Dictionary of Electronics* (Seventh Edition 1999) (hereafter, *Dictionary of Electronics*) attached as Exhibit D (including

definitions of “queue” and terms including “queue” or “queuing”)

(5) The excerpts from Dictionary.com attached as Exhibit E (including definition of “queue”)

(6) The definition of “queue” from WordReference.com English Dictionary attached as Exhibit F

(7) The definition of “queue” from Paul E. Black, *Dictionary of Algorithms and Data Structures* [online] (hereafter, *Dictionary of Algorithms*), Paul E. Black, ed., U.S. National Institute of Standards and Technology, attached as Exhibit G

(8) Any dictionary definition offered by Netflix.

c. Other:

(1) The claims, figures, prosecution histories, and cited references for the ’450 and ’381 Patents.

(2) The attached portions of the transcript of the deposition of Eric P. Meyer taken on September 22, 2006 attached as Exhibit H (Pages 1-3, 35-38, and 263-64).

B. “ordered list”

1. Blockbuster’s Support:

a. Specification:

(1) The word “list” is not contained in the specification of the ’450 and ’381 Patents.

(2) ’450 Patent Col. 4, Lines 54-67; ’381 Patent, Col. 3, Lines 22-35.

(3) ’450 Patent, Col. 8, Lines 43-65; ’381 Patent, Col. 7, Lines 10-32.

(4) ’450 Patent, Col. 9, Line 64 to Col. 10, Line 14; ’381

Patent, Col. 8, Lines 30-46.

b. Dictionaries:

- (1) The excerpts from *OED* attached as Exhibit A (including definitions of “list” and “ordered”)
- (2) The excerpts from *New Lexicon Webster’s* attached as Exhibit B (including definitions of “list,” “order,” and “ordered”)
- (3) The excerpts from *Webster’s Collegiate* attached as Exhibit C (including definitions of “list,” “order,” and “ordered”)
- (4) Any dictionary definition offered by Netflix.

c. Other:

The claims, figures, prosecution histories, and cited references for the ‘450 and ‘381 Patents.

2. Netflix’s Support:

a. Specification:

- (1) ‘381: abstract, figures, claims, 1:23-:55, 2:44-:48, 2:57-:62, 3:11-:35, 4:9-:17, 5:2-:13, 7:27-:30, 8:30-46, 9:49-54, 9:66-10:2, 12:18-:64
- (2) ‘450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the ‘381-patent entries for this term

b. Dictionaries:

- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of “order,” “in order,” and “list”)
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2

(including definitions of “order” and “list”)

(3) The excerpts from *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of “order” and “list”)

(4) The excerpts from *Webster’s Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of “order” and “list”)

(5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of “order” and “list”)

(6) Any dictionary definitions offered by Blockbuster

c. Other:

The claims, prosecution histories, and cited references for the ’450 and ’381 Patents.

C. “based upon the order of the list”

1. Netflix’s Support:

a. Specification:

(1) ’381: abstract, figures, claims, 1:23-:55, 2:44-:48, 2:57-:62, 3:11-:35, 4:9-:17, 5:2-:13, 7:27-:30, 8:30-46, 9:49-54, 9:66-10:2, 12:18-:64

(2) ’450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the ’381-patent entries for this term

b. Dictionaries:

(1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of “based,” “order,” “in order,” and “list”)

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- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of “base,” “based,” “order” and “list”)
- (3) The excerpts from *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of “base,” “based,” “order” and “list”)
- (4) The excerpts from *Webster’s Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of “base,” “based,” “order” and “list”)
- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of “based,” “order” and “list”)
- (6) Any dictionary definitions offered by Blockbuster
- c. Other:

The claims, prosecution histories, and cited references for the ’450 and ’381 Patents.

2. Blockbuster’s Support:

a. Specification:

- (1) ’450 Patent Col. 5, Lines 3-5; ’381 Patent, Col. 3, Lines 38-40.
- (2) ’450 Patent Col. 8, Lines 60-62; ’381 Patent, Col. 7, Lines 27-39.
- (3) ’450 Patent Col. 10, Lines 1-3; ’381 Patent, Col. 8, Lines 34-36.
- (4) ’450 Patent Col. 11, Lines 18-22; ’381 Patent, Col. 9, Lines 50-54.

(5) '450 Patent Col. 13, Lines 62-63; '381 Patent, Col. 12, Lines 25-27.

(6) '450 Patent, Col. 11, Lines 25-38; '381 Patent, Col 9, Line 58 – Col. 10, Line 2; Fig. 5

b. Dictionaries:

(1) The excerpts from *OED* attached as Exhibit A (including definitions of “base,” “list,” and “ordered”)

(2) The excerpts from *New Lexicon Webster's* attached as Exhibit B (including definitions of “base” and “based,” “list,” “order,” and “ordered”)

(3) The excerpts from *Webster's Collegiate* attached as Exhibit C (including definitions of “base” and “based,” “list,” “order,” and “ordered”)

(4) Any dictionary definition offered by Netflix.

c. Other:

The claims, figures, prosecution histories, and cited references for the '450 and '381 Patents.

D. “electronically updating”

1. Blockbuster's Support:

a. Specification:

The words “update” and “updating” are not contained in the specification of the '450 and '381 Patents.

b. Dictionaries:

(1) The excerpts from *OED* attached as Exhibit A (including definitions of “computer” and terms including “computer,” “electronic” and terms including “electronic,” and “update”)

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- (2) The excerpts from *New Lexicon Webster's* attached as Exhibit B (including definitions of "compute" and "computer," "electronic," and terms including "electronic," "electronics," electronically," and "update")
- (3) The excerpts from *Webster's Collegiate* attached as Exhibit C (including definitions of "computer," "electronic" and "electronically" and terms including "electronic," "electronics," and "update")
- (4) The excerpts from *Dictionary of Electronics* attached as Exhibit D (including definitions of "computer," "electronic" and terms including "electronic," "electronics," and "update")
- (5) The excerpts from Dictionary.com attached as Exhibit E (including definitions of "computer," "electronic," and "electronics")
- (6) Any dictionary definition offered by Netflix.

c. Other:

The claims, figures, prosecution histories, and cited references for the '450 and '381 Patents.

2. Netflix's Support:

a. Specification:

- (1) '381: abstract, figures, claims, 1:23-:55, 3:20-:35, 3:45-:49, 6:13-:15, 10:12-:48, 10:52-12:17, 12:18-:64
- (2) '450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the '381-patent entries for this term

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b. Dictionaries:

- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of “electronically” and “update”)
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of “electronic” and “update”)
- (3) The excerpts from *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of “electronic” and “update”)
- (4) The excerpts from *Webster’s Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of “electronic” and “update”)
- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of “electronic,” “electronically,” “updating,” and “update”)
- (6) Any dictionary definitions offered by Blockbuster

c. Other:

The claims, prosecution histories, and cited references for the ’450 and ’381 Patents.

E. “computer-implemented method/steps”

1. Netflix’s Support:

a. Specification:

- (1) ’381: abstract, figures, claims, 1:23-:55, 2:49-:56, 3:38-:49, 6:43-7:9, 7:33-:41, 7:54-:63, 8:18-:29, 10:12-:48, 10:52-12:17, 12:18-:64

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- (2) '450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the '381-patent entries for this term
- b. Dictionaries:
- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of "computer" and "implement")
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of "computer" and "implement")
- (3) The excerpts from *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of "computer" and "implement")
- (4) The excerpts from *Webster's Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of "computer" and "implement")
- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of "computer" and "implement")
- (6) Any dictionary definitions offered by Blockbuster

c. Other:

The claims, prosecution histories, and cited references for the '450 and '381 Patents.

2. Blockbuster's Support:

a. Specification:

- (1) '450 Patent Col. 2, Lines 1-12 (*see also* Certificate of Correction); *see also* Fig. 7.

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- (2) '450 Patent Col. 2, Lines 13-24.
- (3) '450 Patent Col. 2, Lines 42-56.
- (4) '450 Patent, Col. 3, Lines 45-46; '381 Patent, Col. 2, Lines 13-14.
- (5) '450 Patent, Col. 11, Lines 46-Col. 12, Line 39; '381 Patent, Col. 10, Line 9-Col. 11, Line 2.
- b. Dictionaries:
 - (1) The excerpts from *OED* attached as Exhibit A (including definitions of "computer" and terms including "computer" and "implement")
 - (2) The excerpts from *New Lexicon Webster's* attached as Exhibit B (including definitions of "compute" and "computer," "implement," "method," and "step")
 - (3) The excerpts from *Webster's Collegiate* attached as Exhibit C (including definitions of "computer," "implement," "method," and "step")
 - (4) The excerpts from *Dictionary of Electronics* attached as Exhibit D (including definition of "computer")
 - (5) The excerpts from Dictionary.com attached as Exhibit E (including definition of "computer")
 - (6) Any dictionary definition offered by Netflix.

c. Other:

The claims, figures, prosecution histories, and cited references for the '450 and '381 Patents.

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1 **F. “based on/in the desired order”**

2 1. Blockbuster’s Support:

3 a. Specification:

4 (1) ’450 Patent Col. 5, Lines 3-5; ’381 Patent, Col. 3, Lines
5 38-40.

6 (2) ’450 Patent Col. 8, Lines 60-62; ’381 Patent, Col. 7,
7 Lines 27-39.

8 (3) ’450 Patent Col. 10, Lines 1-3; ’381 Patent, Col. 8,
9 Lines 34-36.

10 (4) ’450 Patent Col. 11, Lines 18-22; ’381 Patent, Col. 9,
11 Lines 50-54.

12 (5) ’450 Patent, Col. 11, Lines 25-38; ’381 Patent, Col 9,
13 Line 58 – Col. 10, Line 2; Fig. 5.

14 (6) ’450 Patent Col. 13, Lines 62-63; ’381 Patent, Col. 12,
15 Lines 25-27.

16 b. Dictionaries:

17 (1) The excerpts from *OED* attached as Exhibit A (including
18 definitions of “base” and “ordered”)

19 (2) The excerpts from *New Lexicon Webster’s* attached as
20 Exhibit B (including definitions of “base” and “based,”
21 “desire” and “desired,” “order” and “ordered”)

22 (3) The excerpts from *Webster’s Collegiate* attached as
23 Exhibit C (including definitions of “base” and “based,”
24 “desire” and “desired,” “order” and “ordered”)

25 (4) Any dictionary definition offered by Netflix.

26 c. Other:

27 The claims, figures, prosecution histories, and cited references for the
28 ’450 and ’381 Patents.

2. Netflix's Support:⁴

a. Specification:

(1) '381: abstract, figures, claims, 1:23-:55, 2:42-:46, 2:57-:61, 3:12-:35, 5:2-:13, 7:10-:30, 8:30-:39, 9:66-10:2, 12:18-:64

(2) '450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the '381-patent entries for this term

b. Dictionaries:

(1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of "based," "desired," "in," "order," and "in order")

(2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of "base," "based," "in," "order" and "list")

(3) The excerpts from *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of "base," "based," "in," "order" and "list")

(4) The excerpts from *Webster's Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of "base," "based," "in," "order" and "list")

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⁴Netflix objects to Blockbuster's attempt to offer the distinct claim terms "based on the desired order" and "in the desired order" as a single term. Netflix offers proposed constructions here reserving and without waiving any rights, and will explain its position more fully in its claim-construction briefs.

- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of “based,” “in,” “order” and “list”)
- (6) Any dictionary definitions offered by Blockbuster
- c. Other:

The claims, prosecution histories, and cited references for the ’450 and ’381 Patents.

G. “periodic fee”

1. Netflix’s Support:

a. Specification:

- (1) ’381: abstract, figures, claims, 1:23-:55, 5:24-:35, 5:66-6:3, 6:9-:13, 6:16-:39, 12:18-:64
- (2) ’450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the ’381-patent entries for this term

b. Dictionaries:

- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of “periodic” and “fee”)
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of “periodic” and “fee”)
- (3) The excerpts from *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of “periodic” and “fee”)
- (4) The excerpts from *Webster’s Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of “periodic” and “fee”)

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1 (5) The excerpts from Wiktionary.com attached as Exhibit 5
2 (including definitions of “periodic” and “fee”)

3 (6) Any dictionary definitions offered by Blockbuster

4 c. Other:

5 The claims, prosecution histories, and cited references for the '450 and
6 '381 Patents.

7 2. Blockbuster's Support:

8 a. Specification:

9 (1) '450 Patent, Col. 1, Lines 10-29; '381 Patent, Col.1,
10 Lines 20-48.

11 (2) '450 Patent Col. 14, Lines 24-34; '381 Patent, Col. 12,
12 Lines 54-64.

13 b. Dictionaries:

14 (1) The excerpts from *OED* attached as Exhibit A (including
15 definitions of “fee,” and “periodic”)

16 (2) The excerpts from *New Lexicon Webster's* (1988 Edition)
17 attached as Exhibit B (including definitions of “fee,” and
18 “periodic”)

19 (3) The excerpts from *Webster's Collegiate* (Eleventh
20 Edition) attached as Exhibit C (including definitions of
21 “fee,” and “periodic”)

22 (4) Any dictionary definition offered by Netflix.

23 c. Other:

24 The claims, figures, prosecution histories, and cited references for the
25 '450 and '381 Patents.

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H. “item/movie/game selection criteria”

1. Blockbuster’s Support:

a. Specification:

- (1) ’450 Patent Col. 4, Lines 54-67; ’381 Patent, Col. 3, Lines 22-35.
- (2) ’450 Patent Col. 8, Lines 43-65; ’381 Patent, Col. 7, Lines 10-32.
- (3) ’450 Patent Col. 9, Line 64 to Col. 10, Line 14; ’381 Patent, Col. 8, Lines 30-46.

b. Dictionaries:

- (1) The excerpts from *OED* attached as Exhibit A (including definitions of “criterion,” “item,” and “selection”)
- (2) The excerpts from *New Lexicon Webster’s* attached as Exhibit B (including definitions of “criterion,” “item,” “movie,” “select,” and “selection”)
- (3) The excerpts from *Webster’s Collegiate* attached as Exhibit C (including definitions of “criterion,” “item,” “movie,” “select,” and “selection”)
- (4) Any dictionary definition offered by Netflix.

c. Other:

The claims, figures, prosecution histories, and cited references for the ’450 and ’381 Patents.

2. Netflix’s Support:

a. Specification:

- (1) ’381: abstract, figures, claims, 1:23-:55, 2:44-:46, 2:57-:58, 3:20-:35, 6:66-7:37, 8:30-:46, 9:46-:54, 9:66-10:2, 10:3-:10, 12:18-:64

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- (2) '450: abstract, figures, claims, 1:49-3:20, and corresponding column:line numbers for the '381-patent entries for this term
- b. Dictionaries:
- (1) The excerpts from *Oxford English Dictionary* attached as Exhibit 1 (including definitions of "criterion," "item," "movie," and "selection")
- (2) The excerpts from *The American Heritage Dictionary of the English Language* (4th ed. 2000) attached as Exhibit 2 (including definitions of "criterion," "item," "movie," and "selection")
- (3) The excerpts from *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) attached as Exhibit 3 (including definitions of "criterion," "item," "movie," and "selection")
- (4) The excerpts from *Webster's Third New International Dictionary of the English Language Unabridged* (2002) attached as Exhibit 4 (including definitions of "criterion," "item," "movie," and "selection")
- (5) The excerpts from Wiktionary.com attached as Exhibit 5 (including definitions of "criteria," "criterion," "item," "movie," and "selection")
- (6) Any dictionary definitions offered by Blockbuster

c. Other:

The claims, prosecution histories, and cited references for the '450 and '381 Patents.

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1 **V TIME ESTIMATE**

2 The parties estimate that the Claim Construction Hearing should
3 require no more than three hours.

4 **VI WITNESSES**

5 Neither party proposes to call any expert or fact witnesses at the Claim
6 Construction Hearing.

7 **VII PREHEARING CONFERENCE**

8 The parties do not believe that a prehearing conference is necessary.
9

10 Respectfully submitted,
11

12 DATED: November 15, 2006 KEKER & VAN NEST, LLP
13

14 By _____ /s/
15 Ashok Ramani
16 Attorneys for Plaintiff and Counterdefendant,
17 Netflix, Inc.

18 DATED: November 15, 2006 ALSCHULER GROSSMAN STEIN & KAHAN
19 LLP

20
21 By _____ /s/
22 William J. O'Brien
23 Attorneys for Defendant and Counterclaimant,
24 Blockbuster Inc.
25
26
27
28